

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Melvin Sistrunk,

Petitioner,

vs.

Warden N. Barnes,

Respondent.

C/A No.: 1:21-4145-SAL

**ORDER**

This matter is before the court for review of the May 11, 2022 Report and Recommendation (the “Report”) of United States Magistrate Judge Shiva V. Hodges, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). [ECF No. 16.] The Report recommends dismissal of this case with prejudice for Petitioner’s failure to prosecute his case pursuant to Rule 41 of the Federal Rules of Civil Procedure. *Id.* at 2. Attached to the Report was a notice advising Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. *Id.* at 3. Petitioner did not file objections to the Report, and the time to do so has expired. Nor has Petitioner responded to Respondent’s motion for summary judgment or to the order to advise the court whether he wishes to continue with this case—despite being warned that his failure to respond could result in dismissal of his case with prejudice. *See* [ECF Nos. 12, 14.]

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of only those portions of the Report that have been specifically objected to,

and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the Report, ECF No. 16, and incorporates the Report by reference herein. Accordingly, this action is **DISMISSED** with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). As a result, Respondent’s motion for summary judgment, ECF No. 11, is terminated as **MOOT**.

**IT IS SO ORDERED.**

June 10, 2022  
Florence, South Carolina

/s/Sherri A. Lydon  
Sherri A. Lydon  
United States District Judge